(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: MAY 2 7 2015

FILE #:

PETITION RECEIPT #:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker (Form I-140), the petitioner seeks employment as a "Teaching Assistant and Researcher." At the time of filing, the petitioner held such a position at the The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits two briefs with supporting exhibits.

I. Relevant Law and Regulations

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

In re New York State Dep't of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the beneficiary seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the beneficiary will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the beneficiary's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the beneficiary will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the beneficiary, rather than to facilitate the entry of a beneficiary with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise. *See NYSDOT*, 22 I&N Dec. at 218-19.

The record reflects that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

II. Facts and Analysis

The petitioner received the foreign equivalent of a DDS degree in 2005, and earned a Ph.D. in Food and Nutrition from in 2011. The petitioner filed the Form I-140 with supporting evidence on December 26, 2013, at which time he was pursuing a master's degree in periodontology and craniofacial biology at The petitioner indicated that his research focuses on dental biomaterials and the improvement of dental treatment and care. An introductory letter accompanying the petition stated that the petitioner is "at the forefront of his field in dental biomaterials and research," and that he has been "widely published" in "leading national and international journals" in addition to presenting his work at national and international conferences. The petitioner submitted copies of five published journal articles that he authored or co-authored, copies of four "in progress" papers yet to be published, and evidence that he presented his work at conferences.

The petitioner's introductory letter also stated that he is responsible for several innovations that have "advanced the frontiers of knowledge in the dental and periodontal fields." As evidence of the significance of the petitioner's innovations, the petitioner submitted five letters from faculty members at , and a letter from a faculty member of for Medical Sciences with whom the petitioner has previously collaborated. The letters described the petitioner's research work in the dental and medical fields, identifying what the authors deemed to be his most significant achievements.

In a November 8, 2013, letter, Dr. stated that the petitioner "is best known for his development of a demineralized dentin matrix material used for dental implant placement and a patent application is in process for this work." Dr. stated that the new material "is safer, stronger and cheaper than the currently used materials," and that it also "triggers the body to build new bone around the material." The petitioner did not submit documentary evidence to support Dr. statement regarding a patent application. Further, while several other letters also praised the petitioner's development of this material and stated that it offers advantages over other bone grafting materials, none of the letters specifically indicated whether the material was currently being used in the field or by other researchers.

The submitted letters from faculty members at discussed additional dental research performed by the petitioner, including his research on nerve growth factors in the regeneration of nerves that are damaged during dental procedures. In a December 5, 2013, letter, Dr. stated that the petitioner artificially manufactured a nerve growth hormone normally active only during adolescence, and put it into a virus to allow for slow release of the hormone. Dr. called this research "brilliant," and stated that the petitioner's work is "on the cutting edge of technological advancement." In a separate letter, dated December 13, 2013, Dr. stated that this and other research endeavors "have made significant contributions to the dental field and are likely to impact the clinical practice of dentistry." None of the letters described what effect, if any, the petitioner's findings have already had on dental research or the practice of dentistry. The remaining letters focused mainly on the petitioner's medical research conducted pursuant to his Ph.D. in Food and Nutrition, attesting to the importance of his findings on various topics without specifically describing what influence those findings have had on the field.

In addition, the petitioner submitted evidence of awards and scholarships that he has received from and a Certificate of Appreciation from the recognizing the petitioner's "scientific contribution as a speaker" at a conference. The petitioner also submitted copies of emails from journals inviting the petitioner to review manuscripts, evidence that he has served as a contributing editor for the and documentation of his membership in several professional organizations. The petitioner further submitted three email communications from an online professional network for scientists and researchers, each notifying him that an individual had requested one of his articles and inviting him to upload a full-text version of the article to his online profile. Finally, the petitioner submitted media articles and reports from U.S. government agencies regarding the importance of oral health care as a public health issue.

In a request for evidence (RFE) issued on July 7, 2014, the director requested further evidence to establish that a waiver of the job offer requirement is in the national interest. The director requested that the petitioner submit "further evidence of [the petitioner's] research accomplishments" and influence on the field, including evidence of citation of the petitioner's published work. The petitioner's response to the RFE did not include evidence relating to the citation of his work. Rather, the petitioner submitted additional letters, including new letters from the two faculty members who previously wrote on his behalf, Dr. and Dr. Both of these individuals stated that the petitioner receives invitations from journals to submit research findings for publication, and that such invitations are unusual and indicate recognition of the petitioner's acclaim and his major contributions to the field.

The petitioner submitted copies of emailed invitations for submission of manuscripts from six journals, and As all of the emails were dated after the filing of the petition, they do not establish the influence of his work at the time of filing the petition. The petitioner must establish that he is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Further, while each of the emails was addressed to the petitioner by name, none referenced his work specifically. The email from dated 2014, stated: "Considering your expertise in this field, [we] would like to invite you to submit related papers to us . . . ." Another email, dated May 23, 2014, with the heading "Call for Papers," began: "Advances in Enzyme Research (AER) is very interested in your study. If you have unpublished papers in hand and have the idea of making our journal a vehicle for your research interests, please feel free to submit your manuscripts to this journal. . . ." The petitioner did not submit evidence regarding the number of individuals who received invitations from these journals or the criteria on which the invitations were based.

The petitioner also submitted letters from two individuals outside of the universities at which he has studied. In a July 25, 2014, letter, Dr. of the described the importance of the petitioner's research topics, and stated that "he is widely recognized for his published work and that his contributions to his field of science are significant with regards to the treatment and care of patients with osteoporosis and bone disorders." Dr. stated that the petitioner's expertise in nutritional science, specifically his research into bone-related topics, is relevant to his current research in the dental field. In a July 26, 2014, letter, Dr. of the stated that the petitioner has made "critical advancements" to the field of nutritional sciences. Dr. described the petitioner's research into the role of cadmium in bone loss and fractures and stated, "It was a result of [the petitioner's] work in this area and other scientists like him that cadmium is listed in the " Dr. further stated:

> In fact and because of his discoveries not only in metal toxicity but also in the field of protective bioactive food components and therapeutic advances in bone physiology, medical doctors can now specifically treat diseases, such as osteoporosis and osteoarthritis, by manipulating metabolic pathways controlled by dietary bioactive nutrients and other cellular signaling molecules.

In response to the RFE, the petitioner also submitted evidence of additional papers that he has published and presented since filing the petition, as well as recent requests for him to serve as a peer reviewer for journals. As stated above, eligibility must be established at the time of filing. *Id.*

The director denied the petition on September 4, 2014, in part finding the evidence insufficient to demonstrate that the benefits of the proposed employment would be national in scope. The director stated that he did not dispute that "the [petitioner's] services are beneficial to his institution and its students and research," but that the petitioner had not demonstrated "any measurable influence on the field at the national level." The first and second prongs of the *NYSDOT* analysis relate to the proposed occupation, rather than the individual who will be working in that occupation. As we find that the proposed benefits of dental research are national in scope, we therefore withdraw the director's finding with regard to the second prong of *NYSDOT*. We conduct appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

In denying the petition, the director also found that the petitioner had not established that the national interest would be adversely affected if a labor certification were required. The director listed the documents submitted by the petitioner and stated that the petitioner did not submit supporting documentary evidence to "establish their significance and how they are indicative of the petitioner's influence on the field of teaching and research." The director noted that the submitted letters "are from individuals who are professionally acquainted with the petitioner." The director concluded that the record did not establish that the petitioner has had an impact on his field.

The petitioner states on appeal that he has established his influence on the field through his submission of letters from leading experts, his publications and presentations, and the invitations he has received to serve as a reviewer for journals, to speak at conferences, and to submit papers for publication.

Regarding the submitted letters, the petitioner states that the letters are evidence that the petitioner's innovations and findings have impacted his fields of research. The petitioner contends that the director improperly discounted the letters "as if [he is] saying the authors have lied about [the petitioner's] accomplishments because they are acquaintances." As discussed above, the submitted letters included descriptions of, and praise for, the petitioner's work. However, with the exception of the letter from Dr. the authors did not specifically identify ways in which the petitioner's work has affected clinical practice or the work of other researchers. Further, none of the letters were accompanied by documentary evidence to support the assertions regarding the significance of the beneficiary's work. Statements made without supporting documentation are of limited probative value

and are not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may give less weight to an opinion that is not corroborated. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

In a brief submitted on appeal, the petitioner describes eleven "research innovations that [he] has contributed to the public health and dental fields." He states that these "research discoveries are contained and explained in [the petitioner's] publications and presentations." While the submitted publications and presentations support the petitioner's statements regarding the nature and subject matter of his research findings, they do not, by themselves, demonstrate the significance of those findings. The petitioner did not submit evidence regarding the citation of his work by other researchers, as requested in the director's RFE, to support the assertions that his innovations have had some degree of influence on the field as a whole.[1] As discussed above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner asserts on appeal that his influence on the field is further established by the invitations he has received to serve as a reviewer for journals, to speak at conferences, and to submit manuscripts for publication in journals. Regarding his role as a peer reviewer and a contributing editor, the petitioner states: "Only a top expert would be asked to review the work of others in the field." He further states:

> The fact that [the petitioner] is receiving invitations to publish and speak is recognition of [his] standing in his field, an acknowledgement that other professionals find him to be a leader in this field and the importance of his research findings. A minimally qualified applicant does not receive such invitations. . . . It is highly unusually [sic] for a journal to INVITE someone to submit a paper for publication.

Many of the invitations submitted by the petitioner post-date the filing of the petition and therefore cannot be used to establish his influence on the field at the time of filing. 8 C.F.R. § 103.2(b)(1). Regardless, while two of the submitted letters assert that invitations to submit manuscripts are noteworthy, the record does not include sufficient documentary evidence to establish the uncommon

[1] A search on Google Scholar indicates that the petitioner's published work had one independent citation at the time of filing the petition, and that his work has been cited a total of eight times to date, including at least one self-citation.

or significant nature of the specific invitations the petitioner has received, or the criteria on which they were based. *See Matter of Soffici*, 22 I&N Dec. at 165.

III. Conclusion

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the beneficiary must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

As is clear from the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual seeking the waiver. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

We will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.